

**Newspaper and Mail Deliverers Union of New York
and Vicinity and Newark Morning Ledger Com-
pany. Case 22-CD-359**

March 10, 1982

DECISION AND ORDER

**BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN**

Upon a charge filed on September 19, 1980, by Newark Morning Ledger Company, and duly served on Newspaper and Mail Deliverers Union of New York and Vicinity, herein Respondent, the General Counsel of the National Labor Relations Board for Region 22 issued a complaint and notice of hearing on June 22, 1981, against Respondent, alleging that Respondent has engaged in and is now engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i) and (ii)(D) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing were duly served on the parties to the proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that since on or about September 15, 1980, Respondent has demanded that the Newark Morning Ledger assign the work of handling newspaper and jurisdiction over equipment after the wire tying machines in the mailroom at its Piscataway, New Jersey, plant to employees who are members of or represented by Respondent rather than to employees not members of nor represented by Respondent. The complaint further alleges that since March 22, 1981, and continuously thereafter, Respondent has refused to withdraw from arbitration the issue of whether Respondent is entitled to the work described above, despite the Board's Decision and Determination of Dispute issued March 26, 1981, finding that Respondent is not entitled to jurisdiction over the work,¹ all with the object of forcing and requiring the Newark Morning Ledger to assign the described work to employees who are members of, or represented by, Respondent where the Newark Morning Ledger is not failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work. Respondent failed to file an answer to the complaint.

On August 6, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment.² Subsequently, on August 13,

1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause, and, therefore, the allegations in the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing duly served on Respondent herein specifically states that unless an answer to the complaint is filed within 10 days of service thereof "all of the allegations contained in the Complaint shall be deemed to be admitted to be true and may be so found by the Board."

As noted above, Respondent has failed to file an answer to the complaint and has further failed to file a response to the Notice To Show Cause. Therefore the allegations of the General Counsel's Motion for Summary Judgment stand uncontroverted.

Accordingly, under the rule set forth above, no good cause having been shown for the failure to file a timely answer, the allegations of the complaint are deemed admitted and are found to be true, and we shall grant the General Counsel's Motion for Summary Judgment.

¹ *Newspaper and Mail Deliverers Union of New York and Vicinity*, 255 NLRB 282 (1981).

² The complaint alleged that Respondent violated Sec. 8(b)(4)(i) and (ii)(D). In his Motion for Summary Judgment, the General Counsel withdrew the (ii) allegation. Thereafter, the General Counsel filed an erratum

seeking to withdraw the (i) allegation and thereby retain the (ii) violation. However, in requesting to amend the Motion for Summary Judgment to allege the (ii) violation the General Counsel inadvertently substituted language reflecting a (i) violation. We grant the General Counsel's motion to withdraw the (i) allegation substituting language conforming to the (ii) violation actually alleged.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

The Newark Morning Ledger Company is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New Jersey. At all times material herein it has maintained its principal office and place of business at Star Ledger Plaza, Newark, New Jersey, and is now, and has been continuously engaged in the business of newspaper publishing at its Star Ledger Plaza, Newark, New Jersey, and its 20 Duke Road, Piscataway, New Jersey, facilities. During the preceding 12 months, the Employer, in the course and conduct of its business operations, derived gross revenues in excess of \$200,000 and purchased goods and materials valued in excess of \$50,000 from suppliers located outside the State of New Jersey, which goods valued in excess of \$50,000 were shipped directly to its Piscataway, New Jersey, facility from points outside the State of New Jersey.

We find, on the basis of the foregoing, that the Employer is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. LABOR ORGANIZATIONS INVOLVED

Newspaper and Mail Deliverers Union of New York and Vicinity and Newark Mailers Union No. 11 a/w International Typographical Union are labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

Since September 15, 1980, the Employer has operated an auxiliary publishing plant at 20 Duke Road, Piscataway, New Jersey. Since that date it has assigned the work of handling newspapers and jurisdiction over equipment after the wire tying machines in the mailroom at the Piscataway plant to employees who are not members of, or represented by, Respondent. Since on or about September 15, 1980, Respondent has demanded that the Employer assign the work of handling newspapers and jurisdiction over equipment after the wire tying machines in the mailroom at the Piscataway plant to employees who are members of or represented by Respondent rather than to employees who are not members of or represented by Respondent.

Since March 22, 1981, Respondent has refused to withdraw from arbitration its demand that it be given jurisdiction of the described work. Respondent has not been certified by the Board as the collective-bargaining representative of any of the employees performing the work described above nor has the Board issued any order determining that Respondent is the bargaining representative of the employees performing said work.

On March 26, 1981, the Board issued its 10(k) award, assigning the work of handling newspapers and equipment after the wire tying machines in the mailroom at the Employer's Piscataway facility to employees who are represented by Newark Mailers Union No. 11 a/w International Typographical Union. The Board also found, *inter alia*, that Newspaper and Mail Deliverers Union of New York and Vicinity was not entitled to force or require the Employer to assign the disputed work to employees represented by that organization by means proscribed by Section 8(b)(4)(ii)(D) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(ii)(D) of the Act, we shall order that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The Board, on the basis of the foregoing facts, and the entire record, makes the following:

CONCLUSIONS OF LAW

1. The Newark Morning Ledger Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Newspaper and Mail Deliverers Union of New York and Vicinity and Newark Mailers Union No. 11 a/w International Typographical Union are labor organizations within the meaning of Section 2(5) of the Act.

3. By demanding jurisdiction over the work, since September 15, 1980, and by refusing to withdraw this issue from arbitration since March 22,

1981, Respondent did threaten, coerce, and restrain, and is now threatening, coercing, and restraining persons engaged in commerce and in industries affecting commerce with an object of forcing or requiring the Newark Morning Ledger Company to assign particular work to employees who are members of or are represented by Respondent in violation of Section 8(b)(4)(ii)(D) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Newspaper and Mail Deliverers Union of New York and Vicinity, its officers, agents, and representatives, shall:

1. Cease and desist from threatening, coercing, or restraining any person engaged in commerce or in an industry affecting commerce where in either case an object thereof is to force or require the Newark Morning Ledger Company to assign the work in dispute to employees represented by Respondent rather than to employees represented by Newark Mailers Union No. 11 a/w International Typographical Union.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw from arbitration its demand that Newark Morning Ledger assign to it jurisdiction of the work described herein.

(b) Post at its business offices and meeting hall copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 22, after being duly

signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Furnish the Regional Director for Region 22 with signed copies of such notices for posting by the Newark Morning Ledger Company, if it be willing, in places where notices to employees are customarily posted.

(d) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT demand jurisdiction over the work of handling newspaper and jurisdiction over equipment after the wire tying machines in the mailroom, of the Newark Morning Ledger or refuse to withdraw this issue from arbitration, or threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is forcing or requiring the Newark Morning Ledger to assign the work to employees who are members of or are represented by us.

WE WILL withdraw from arbitration our demand that Newark Morning Ledger assign to us the jurisdiction of the work described herein.

NEWSPAPER AND MAIL DELIVERERS
UNION OF NEW YORK AND VICINITY

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."